

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000555-001 DT

07/15/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
M. Cearfoss
Deputy

FILED:_____

COLLEEN LOPEZ

CHESTER B MCLAUGHLIN
CHARLEEN H GREER

v.

PHYLLIS BIEDESS (001)
ARIZONA HEALTH CARE COST
CONTAINMENT SYSTEM ADMINISTRATION
(001)

LOGAN T JOHNSTON

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

This Court has jurisdiction of this administrative appeal pursuant to the Administrative Review Act, A.R.S. §12-901 et seq.

Factual and Procedural History

Plaintiff Colleen Lopez (“Lopez”) is a 43 year old woman and physically disabled.¹ She is unable to walk, but is mentally competent.² Lopez is a member of the Salt River Pima-Maricopa Indian Community Tribe.³ She is currently a recipient of benefits under the Arizona Long Term Care System (“ALTCS”).⁴ Eligibility for ALTCS benefits requires that the recipient’s gross income not exceed \$1,656.00 per month.⁵ However, Lopez receives per capita

¹ Reporter’s Transcript at 7.

² Id.

³ Lopez’ Opening Memo. of October 20, 2003, at 3.

⁴ Id.

⁵ Id.

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payments from Indian gaming revenue, totaling \$2,734.35 in February of 2003.⁶ To shield this additional income and avoid ineligibility, Lopez' mother, pursuant to 42 U.S.C. § 1396p(d)(4)(A), executed a special needs trust on June 27, 2003.⁷ Lopez created a document on the same day that irrevocably assigned her per capita payments to the trust.⁸ The trust intended to provide for Lopez' supplemental needs beyond what was provided for by ALTCS.⁹

ALTCS denied Lopez eligibility for benefits on January 9, 2003, asserting that she no longer met the income requirement.¹⁰ On February 14, 2003, Arizona Health Care Cost Containment System Administration ("AHCCCS") issued a reply explaining the basis for ALTCS denial of benefits.¹¹ AHCCCS argued that Lopez' trust failed to meet eligibility requirements under ALTCS guidelines.¹² Lopez appealed the AHCCCS decision.¹³ An administrative hearing was held on March 2, 2003 and the Administrative Law Judge ruled in favor of AHCCCS.¹⁴ Lopez timely filed this administrative appeal action on June 10, 2003.

2. Issues Presented

The Court is faced with two issues in this case:

First, under the standard set forth Berenter v. Gallinger,¹⁵ was AHCCCS' decision arbitrary, capricious, an abuse of discretion, or contrary to Arizona law?

Second, was AHCCCS' decision supported by the evidence at hand?

3. Standard of Review

Pursuant to the Administrative Review Act, the final administrative decision is subject to review by the Superior Court.¹⁶ The Court reviews the agency's conclusions of law de novo.¹⁷ Generally, "when an administrative decision is appealed to the superior court, the ... court decides only whether the administrative action was "illegal, arbitrary, capricious, or involved an

⁶ Id. at 4

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 2

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ 173 Ariz. 75, 839 P.2d 1120 (App. 1992).

¹⁶ A.R.S. §§ 12-901-12-914 (2004).

¹⁷ Id. at 387, 807 P.2d at 1123.

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abuse of discretion.¹⁸ The Court's review "may not re-weigh the evidence in order to resolve perceived conflicts."¹⁹

To reverse an agency's decision, "the trial court must find that there was no substantial evidence to support the agency decision."²⁰ In matters affecting the resolution of factual issues, the Berenter standard "requires a determination of whether there was substantial evidence to support the agency's decision."²¹ If two inconsistent factual conclusions are supported by the record, then there is substantial evidence to support either conclusion in an administrative decision.²² This Court "may not function as a 'super agency' and substitute its own judgment for that of the agency where factual questions and agency expertise are involved."²³

The Court shall give considerable weight to an agency's construction of a statutory scheme.²⁴ When the legislature has explicitly authorized an agency to promulgate regulations relating to a statute, "such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."²⁵ An agency's interpretation of its own regulations is given great deference by the Court.²⁶ Thus, the Court will defer to the agency's interpretation unless an alternative reading is compelled by the regulation's plain language or by other indications of the agency's intent at the time of the regulation's promulgation.²⁷

4. Discussion

Lopez argues the following:

- 1) That Lopez is a recipient of benefits under ALTCS and is no longer entitled to benefits due to exceeding the monthly income eligibility limit of \$1,656.00.
- 2) That pursuant to 42 U.S.C. 1396p(d)(4)(A), Lopez established a special needs trust, executed by Lopez' mother, for per capita payments from Indian gaming revenue, made by the Salt River Pima-Maricopa Indian Community Tribe from Indian gaming revenue.

¹⁸ Berenter, 173 Ariz. at 77, 839 P.2d at 1122.

¹⁹ DeGroot v. Ariz. Racing Comm'n., 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984).

²⁰ Id.; 686 P.2d at 1306.

²¹ Id.; 686 P.2d at 1306.

²² Id.; 686 P.2d at 1306.

²³ Id.; 686 P.2d at 1306.

²⁴ Ferguson v. City of Phoenix, 931 F.Supp. 688, 694 (D. Ariz. 1996).

²⁵ Id. (quoting Chevron, U.S.A., Inc. v. Natural Resources Def. Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984)).

²⁶ Id.

²⁷ Id. at 695.

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- 3) That Lopez irrevocably assigned said income to the trust through an assignment document signed by Lopez and forwarded to the tribe.
- 4) That AHCCCS denied Lopez eligibility for benefits due to her anticipated per capita distribution of \$2,734.00.
- 5) That the trust was properly established in accordance with 42 U.S.C. 1396p(d)(4)(A), and that the income irrevocably assigned to the trust does not count for eligibility purposes.

Lopez' argument is without merit. Lopez is held to the same eligibility standard like any other ALTCS applicant. Lopez argues that despite her apparent ineligibility for ALTCS support, she should be given the benefit of keeping all of her income, paid to and protected by a special needs trust, while accessing government subsidized medical care at taxpayer expense. Despite Lopez' cleverness in argument, she is wrong in both law and fact. ALTCS eligibility addresses issues such as fraud, deception, and manipulation. ALTCS helps those who are in greatest need and require the most help. To allow Lopez' argument to stand would not only allow fraud, deception, and manipulation to take place, but would create a system that is both unfair and ineffective. ALTCS is only effective if it can address the needs of the neediest in society. It becomes ineffective when special treatment is accorded to people whose needs are not dire, giving rise to potential fraud, deception, and manipulation. Thus, this Court affirms the decision of the AHCCCS Director and defers to its findings of fact.

The ultimate issue in this case is whether the trust created for Lopez' benefit should be counted as a source of income available to her. Under 42 U.S.C. § 1396p(d)(4)(A), one may execute a special needs trust for the benefit of a disabled person under the age of 65. The statute requires a parent, grandparent, guardian, or court to create the trust with funds of the disabled person.²⁸ Lopez' mother executed a special needs trust on June 27, 2002.²⁹ On that same day, Lopez created a document that irrevocably assigned her per capita payments from Indian gaming revenue to the trust.³⁰ The trust intended to supplement Lopez' needs beyond what was provided for by ALTCS.³¹

Federal law requires that "a state participating in the Medicaid program must establish resource standards for the determination of eligibility based only on 'such income and resources as are [...] *available* to the applicant or recipient.'" ³² A trust *can be considered* in evaluating income eligibility.³³ In Romo, the appellant in that case asked the Court of Appeals to hold that a Medicaid Qualifying Trust was not established by appellant personally, but at the request of his

²⁸ § 1396p(d)(4)(A)

²⁹ Lopez' Opening Memo., at 4

³⁰ Id. at 4.

³¹ Id. at 4-5.

³² Romo v. Kirschner, 181 Ariz. 239, 241, 889 P.2d 32, 34 (App. 1995) [quoting 42 U.S.C. § 1396a(a)(17)(B) (2004)].

³³ See Id., 889 P.2d at 34 (the court found that a Medicaid Quantifying Trust is to be considered in evaluating income eligibility).

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conservator with a tribal court's blessing.³⁴ The Court rejected appellant's argument, finding that "a trust is established by the person who provides the consideration for the trust even though in form it is created by someone else."³⁵ In other words, the trust was created by the appellant for appellant's benefit, with his conservator merely acting on his behalf.³⁶

The Court further stated that:

Congress intended to restrict eligibility to those lacking the resources to pay for their own care and to prevent those seeking subsidized benefits from retaining assets which should be used to pay for such care. Congress passed the Medical Qualifying Trust statute for these purposes. In addition, allowing this trust to be excluded from the evaluation of eligibility would be manifestly unfair to others who have been required to exhaust their assets before receiving benefits. The distinction drawn by appellant heightens the apparent unfairness: a beneficiary who is represented by a conservator and has his trust approved by a court may preserve his assets, while one who lacks a conservator and court approval loses them.... Moreover, appellant's argument undoubtedly would result in sizeable assets becoming exempt from the ordinary requirement that the assets be expended before public assistance is granted, thereby placing a strain on limited governmental resources for indigent health care.³⁷

Thus, where the intent of the trust is to supplement governmental health care benefits, the "approach merely gives a license to transfer assets into a trust which ... will be shielded from otherwise applicable eligibility standards."³⁸ In order to "preserve the integrity of indigent health care eligibility standards and effectuate the federal statutory purpose of closing the trust loophole," a person cannot shelter proceeds in a trust while requiring taxpayers to pay for their medical expenses, in violation of federal and state indigent health care policy.³⁹

Lopez cannot shield income in a special needs trust while requiring taxpayers to pay for her medical expenses. Lopez is a member of the Salt-River Pima-Maricopa Indian Community Tribe and receives income from Indian gaming revenue administered by the tribe.⁴⁰ Currently, gross monthly income for ALTCS eligibility is \$1656.00 per month.⁴¹ Lopez' income from Indian gaming revenue exceeds that amount, totaling \$2,734.35 in February of 2003.⁴² To maintain her eligibility under ALTCS guidelines, Lopez had her mother execute a special needs

³⁴ Id., 889 P.2d at 34.

³⁵ Id., 889 P.2d at 34 [quoting Forsyth v. Rowe, 226 Conn. 818, 629 A.2d 379, 384 (App. 1993)].

³⁶ Id., 889 P.2d at 34.

³⁷ Id. at 242, 889 P.2d at 34.

³⁸ Id., 889 P.2d at 34.

³⁹ Id. at 242-243, 889 P.2d at 34-36.

⁴⁰ Lopez' Opening Memo., at 4.

⁴¹ Id. at 2.

⁴² Id.

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trust, pursuant to 42 U.S.C. § 1396p(d)(4)(A), claiming the trust helped to *supplement needs* in addition to benefits received from ALTCS.⁴³ While her mother executed the trust, the trust was created by Lopez for her own benefit. Lopez sought to shield assets that would otherwise be subject to applicable eligibility standards. As a result, Lopez is afforded a potential windfall in her attempt to exempt assets from ALTCS's evaluation of her prospective eligibility.

Lopez created this trust for her own benefit, convinced her mother to execute said trust in order to shield assets, and claimed to retain ALTCS eligibility despite the existence of income over the maximum amount allowed. To allow Lopez the ability to exclude assets, protected by a trust but available for her benefit, in order to maintain her eligibility for ALTCS benefits is *manifestly unfair*. Lopez not only violated the intended purpose of indigent health care, as set forth by Congress, but engaged in a sham enterprise that depletes what little resources the government has to provide for the neediest of people. States, in compliance with federal guidelines, must set eligibility standards to ensure both efficiency and fairness. To deny the State of Arizona the right to prescribe its own guidelines to fairly allocate these scarce resources would be to destroy the integrity of the indigent health care system. Thus, Lopez does not and cannot have a license to hide assets, while requiring the taxpayers to pay for her medical expenses. Arizona law must preserve the indigent health care system for the betterment of those who do not have the resources to afford reasonable health care. Lopez cannot deny her ineligibility and, as such, this Court must affirm the decision of the AHCCCS Director in this case. That decision is clearly supported by substantial evidence within the record.

5. Conclusion

This Court determines that the decision of the AHCCCS Director was legally correct and based upon uncontroverted facts within the record. Lopez cannot shield income in a special needs trust while requiring taxpayers to pay for her medical expenses. It is manifestly unfair to those in the greatest need. Lopez' ineligibility is apparent from the record and this Court cannot allow Lopez' action to threaten the integrity of the indigent health care system.

IT IS ORDERED affirming the decision of the AHCCCS Director.

IT IS FURTHER ORDERED denying all relief as requested by the Plaintiff in this case.

IT IS FURTHER ORDERED that counsel for the Defendant shall lodge an order and judgment consistent with this minute entry opinion no later than August 27, 2004.

⁴³ *Id.* at 4-5.